IN THE HIGH COURT OF JUDICATURE AT BOBBY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. 1371 OF 2003

Shree Shankeshwar Parshwanath Swetambar Murtipujak Tapagaccha Jain Sangh, Plot No. 115, Dinesh Bhavan, Dr. M. P. Vaidya Marg, Marg, Ghatkopar (E), Mumbai 400077) Petitioner

Vs.

1. Municipal Corporation of Greater. Mumbai, Mahapalika Marg, Mumbai 400 001.
2. The Dy. Assessor & Collector (Octroi) Municipal Corporation of Greater Mumbai, C.S.M.Marg) Bldg., 3rd Floor, Paltan Road) Mumbai 400 001.) Respondent

Mr. Aditya Chitale, advocate for petitioner.

Mrs. Shobha Ajitkumar, with Ms. Purandare for respondent.

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CORAM: ANOOP V. MOHTA, J.

DATE : MARCH 10, 2006.

ORAL JUDGMENT :

1. Heard both sides. This is a petition filed by a Public Charitable Trust, registered under the Bombay Public Trust Act,1950 (BPT Act) and sought to challenge the orders dated 31st May 2003 seeks by the Respondent, whereby petitioner's application for claiming exemption certificate from octroi, Bombay Municipal Corporation Exemption from Octroi (Free Gift, etc.) Rules 1966, (for short Octroi Rules) issued under Section 195-1A of the Mumbai Municipal Corporation Act 1988 (for short MMC Act). Section 195-1A,and relevant Rule 3 are reproduced as

under:-

Sectoion 195-1A.Exemption of gifts, etc., from octroi.--Subject to such rules as [*the Commissioner, with the Approval of the Standing Committee]*, may from, time to time frame in this behalf, the Commissioner may by general or special order exempt any articles-

(i) which are received as a free gift to relieve distress;

(ii) which are imported by any charitable institution for a charitable purpose;

(iii) ---;

(iv) ----.

Rule 3. Definitions

In these rules there may be something repugnant in the subject or context-

(1) The charitable institution means an institution which is registered under the Bombay Public F Trust Act, 1950 and the Indian Public Trust Act and/or registered as such under Act of any of the State within the Indian Republic or under the Act of the Central Government.

(2) Charitable purpose includes :-

(a) relief of poverty or distress
(b) education
(c) medical relief
(d) advancement of any object of general public utility.

Rule 5. **Exemption of articles imported by Charitable Institution for Charitable purpose**-

(1) application for the same in the form "X" duly signed by either an official

empowered by the Charitable institution or by a duly constituted attorney on its behalf is tendered at the time of import and

(2) the applicant declares that the articles are imported for the charitable purpose as specified in the rules.

(3) The applicant guarantees to produce within six months or within such extended period as may be allowed by the Commissioner, the necessary evidence that the articles so imported have used for fulfilling the charitable purpose for which the articles is/are imported.

2. As per the scheme of the MMC Act & Octroi Rules & specially in view of above provisions, it is necessary for the parties to file an application to claim exemption from the Octroi duty on any grounds which they want to use for the "Charitable purpose" as contemplated and specially by a Charitable institution like petitioner in Form X, duly signed by either an official empowered by the charitable institution or by a duly constituted attorney on its behalf. It needs to be tendered at the time of importof such goods. The respondents thereafter need to consider such application on the basis of material placed on the record. While passing the order of granting or rejecting exemption, it is essential for the respondents to follow principle of natural justice

and to pass reasoned order.

3. In the present case by an application dated 26th March, 2003, in reference to the respondent's letter 10th March 2003 an application was filed and a letter/representation was filed before respondent no.2 and claimed for exemption . It is clearly mentioned in said application that "a block plan showing the land for proposed Jain Temple is also attached to the Agreement." A reference was also made to lease and other documents. By an impugned order dated 31st May, 2003, respondent no.2 rejected the said application, by observing that "I regret, cannot be acceded to, as you have no base to claim exemption from octroi and purpose of import cannot be termed as charitable purpose." A charitable trust or institution, based on the material and documents, if applies for an exemption certificate, as referred above, it is necessary for the respondent Corporation to consider the said application in detail. In case of any doubt, the respondent definitely can insist for more particulars. It appears from the impugned order that by a single lined order, the said application

for exemption from octroi was rejected. The application filed by the petitioner itself reflects various documents reference including an agreement, I.O.D. and the submission for such an exemption as they want to construct Jain Temple, on plot of land at Garodia Nagar, Ghatkopar (E). Such application according to me ought not to have been rejected, without passing reasoned order.

4. The learned counsel appearing for the petitioner has pointed out that temple has been virtually constructed. The petitioner, as there was no exemption certificate granted, was regularly paying the octroi duty on the import goods, used and utilised for the construction of the temple.

5. The present petition has been pending since 12th June, 2003. Therefore, considering the averments made in the petition, including Annextures, relied on, it appears that petitioner is a charitable institution. The aims and objects and functional activities, as reflected, are squarely fall within the ambit of word "charitable institution". The respondent therefore need to

verify and consider such applications for exemption certificate, filed by the petitioner, as at the relevant time they want exemption certificate for the purpose of importing the material for the construction of the temple. Now, they have already constructed the temple by importing such materials. Their right to claim exemption from octroi and the Act and Rules referred above, therefore, need to be decided by the respondent afresh.

6. Taking all this into account, I am of the view that respondents should consider the application dated 26th March, 2003 afresh and pass such order after detailed scrutiny and verification, of all the issues as involved.

7. The learned counsel appearing for the respondents, however, submitted that the parties should apply for such exemption and submit the details in support of such exemption certificate scheme. In the present case, as there is no such supporting documents filed, therefore, such exemption was not granted. I am not inclined to accept this submission. I am of the view that, in

view of application, the respondent ought to have called for more details and material, before rejecting such claim of exemption, as claimed.

8. Taking all this into account, the order dated 31st May, 2003 is quashed and set aside. The respondents are directed to hear the application dated 26th March, 2003 afresh. The parties are at liberty to file additional documents or material to claim said exemption certificate. Respondents are also free to ask more details and materials before passing any order, if necessary. The respondent to consider the said application afresh in accordance with law and pass order accordingly.

9. In view of this, the petition is allowed in terms of prayer Clause (a), subject to above direction.

10. No orders as to costs.

(ANOOP V. MOHTA, J.)